

AN EXPOSITION OF THE DEVELOPMENT OF LEGAL REASONING IN PRE-ELECTION MATTERS IN NIGERIA

PROF. M.K. DANLADI*

A. A. BELLO**

Abstract

This paper examines the problem of the persistent challenge of pre-election litigation within Nigeria's electoral jurisprudence. Despite an established legal framework, a high volume of lawsuits arising from party primaries recurs each electoral cycle, raising concerns about the perceived rationality of judicial reasoning and its impact on electoral justice. This study adopts a doctrinal approach and traces the development of judicial thought on pre-election matters in the Fourth Republic, identifying the forms of legal reasoning employed and proposing pathways towards enhanced party self-regulation. Using the doctrinal approach, the study conducted a thematic analysis of purposively selected pre-election cases decided before the 2023 general elections. The study finds a predominance of strict textualism in the cases analysed which also shows how arguments from text provides interpretative clarity and consistency. However, an emergent category of issues, based on a 'likelihood of a breach' of electoral law, is identified as operating outside the statutory definition of pre-election matters thereby creating jurisdictional ambiguity. A central conclusion is that the predictable outcomes of textualism are undermined by the persistent failure of political parties to adhere to clear electoral laws and utilise internal dispute resolution mechanisms. To address these issues, the study recommends the inclusion of judicial exposition of emerging concepts over reliance on precedent, mandated proficiency in electoral law for party officials, and an amendment to the Electoral Act 2022 to introduce mandatory mediation as a preliminary dispute resolution step, leveraging the Arbitration and Mediation Act 2023 to reduce judicial caseloads and foster intra-party democracy.

Keywords: Pre-election matters; legal reasoning; party primaries; electoral jurisprudence; judicial intervention

1.1 Introduction

Prescriptive party laws in multi-party constitutional democracies micromanage political parties' affairs in attempts to inculcate intra-party democracy,¹ which enable party members to seek redress for grievances in court. The mass model of party organization requires that leadership and candidate selection should be carried out by collective party bodies, but in reality, these models are not free of elitist and oligarchic tendencies,² hence the involvement of the judiciary in the resolution of intra-party disputes. Arguably, judicial interventions in intra-party matters arise

* Professor of Public Law, Ahmadu Bello University Zaria.

** Researcher, PhD Public Law, Ahmadu Bello University, Zaria.

¹ Janda, K. (2009). Adopting Party Law. In: Young, J.H. (Ed.). *International Election Principles: Democracy & the Rule of Law*, p.105. ABA Publishing.

² Ihembe, M. and Isike, C. (2022). Judicialising Party Primaries. *Journal of African Elections*, 21(1), p. 25; Ignazi, P. (2020). The Four Knights of Intra-party Democracy: A Rescue for Party Delegitimation. *Party Politics*, 26(1), pp. 9–20.

during the selection of candidates for elective positions, where subsisting judgments should have been sufficient to progressively eliminate or reduce the number of such suits instituted, but “the ghost of the matter has been a reoccurring decimal”³ due to an apparent desire for authoritative judicial pronouncement and public unwillingness to appreciate the legal reasoning in the judgements in these matters.

The arguments justifying legal choices in political party matters are often undermined by the perception that the legal reasoning and argumentation are influenced by factors other than the law and that the judgements manifest poor rationalisation of the judicial choices that create what is seen as an affront on electoral justice.⁴ In its electoral law jurisprudence, the Nigerian judiciary has attempted to be consistent in arguments justifying judicial decisions that have influenced the development of electoral law impacting intra-party activities within the legal framework for such matters consistent with the prescriptions exclusively in the Constitution, the Electoral Act, specific regulations issued by the electoral commission, and political party constitutions and regulations. This consistency has not provided an answer to questions regarding the persistence of pre-election matters arising from party primaries with each electoral cycle.

The aim of this paper is therefore to trace the thought process on the identification of pre-election matters in the jurisprudence of Nigerian courts in the fourth republic within the broader framework of intra-party democracy. It will also identify and explain the type of arguments the courts use in justifying their decisions in the identified pre-election matters by reviewing legal arguments used in purposively selected pre-election cases decided before the 2023 general elections and then make recommendations for the more efficient use of legal reasoning to empower political parties self-regulate thus reducing the incidence of judicial intervention in pre-election matters that present novel factual issues in the hope of contributing to the overall development of electoral jurisprudence in Nigeria.

1.2 Conceptual clarifications

1.2.1 Development

The word ‘development’ here is not a reference to the impact of law on development as espoused in the law and development literature which only presents the role law plays in the process of development.⁵ As a historical process, development refers to the unfolding of human history, or process of modernization, over a long period of time, in a manner that is thought to be progressive where progress conforms to a certain societal conceptualization. A development in this paper refers to an event constituting a stage in a changing situation that includes *the act, process, or result of evolving* new ideas derived from new knowledge and the effective application of this knowledge through critical thinking to reach informed judicial decisions.

1.2.2 Legal reasoning

³ Aneke, P.C. (2021). Determination of Internal Affairs of a Political Party: Pre-election and Jurisdictional Matters. *Madonna University Nigeria, Faculty of Law Journal*, 6(1), p. 137.

⁴ Affen, P. (2021). Electoral justice vs. Legal Justice in Nigeria: Do the Waters Mix? *Nigerian Current Law Review*, 1(1), p. 69.

⁵ Lee, Y. (2017). General Theory of Law and Development. *Cornell International Law Journal*, 50, pp. 415-471

Legal reasoning is the thought process used in justifying legal and judicial decisions that capture the rational, practical, interpretive, and evaluative process within a system of pre-existing laws,⁶ viewed as a particular form of practical or moral reasoning operating within the constraints of positive law. Fundamentally, the basic pattern of legal reasoning is reasoning by example, which Levi describes as a three-step process in which a proposition descriptive of a first case is made into a rule of law and then applied to a next similar situation.⁷ This process encapsulates legal interpretation and legal argument that aim to establish what the law for the case is and how best to apply it.⁸ In the judicial process, legal reasoning refers to how lawyers and judges justify the choices they make among various legal solutions⁹ and a kind of interaction between judges and their audience,¹⁰ as they attempt to determine definitive commands or directives which differentiate the legal from the illegal, while also acknowledging reasonable or good faith evaluative criteria which do not specify the weight that should be given to any one specific decisive factor¹¹ in reaching a decision. The validity and weight due to decisive factors as sources of law are underscored by H.L.A. Hart's rule of recognition, which establishes a connection between elements of legal reasoning with a legal system.¹²

Levi emphasizes reasoning by example, where judges are not bound by the prior judge's statement of the rule of law and may find irrelevant facts which prior judges thought important, thereby making new rules to replace old ones.¹³ MacCormick advances a view of legal reasoning as an intricate process of justification, where a judge must demonstrate that a decision is justified deductively from a rule as such produces better consequences than any alternative, while also being consistent with existing legal norms and coherent with general legal principles.¹⁴ Conversely, legal realists like Frank and Hutchenson highlight the human element and argue that judicial decisions often begin with a vaguely formed conclusion or a 'hunch' from which the decision maker afterwards tries to find the premises which will substantiate the hunch.¹⁵ Hutchenson asserts that judges use intuition as they often draw from a subconscious repository of knowledge from their experience to reach decisions.¹⁶ This process is further complicated by the exercise of judicial discretion, which Hart identifies as a power of discerning what is appropriate to be done, necessitated by the 'twin handicap of relative ignorance of fact and relative indeterminacy of aim'¹⁷ as to make discretion inevitable because lawmakers craft legal rules

⁶ Keyes, E. (2011). Judicial strategy and legal reason. *Indiana Law Review*, 44(2), 359-360.

⁷ Levi, E.H. (1949). *An Introduction to Legal Reasoning*. The University of Chicago Press, pp. 1-2.

⁸ Atria, F. (2001). *On Law and Legal Reasoning*. Hart Publishing, Portland Oregon, p. 169.

⁹ Carter, L. and Burke, T.F. (2016). *Reason in Law*. Ninth Edition. University of Chicago Press. p. 12.

¹⁰ Wenxiu, S. (2020). Language Strategies in Legal Reasoning of Judgments: An Engagement-adaptation Model. *International Journal of English Language Education*, 8(1), p. 68.

¹¹ Kaplow, L. (1992). Rules versus Standards: An Economic Analysis. *Duke Law Journal*, 42, pp. 561-562.

¹² Hart, H.L.A. (1994). *The Concept of Law*. Second Edition. Clarendon Press, p. 266.

¹³ Levi, E.H. (1949). op. cit., Pp. 2-3.

¹⁴ MacCormick, N. (1978). *Legal Reasoning and Legal Theory*. Clarendon Press, p. 100.

¹⁵ Frank, J. (1949). *Law and the Modern Mind*. Stevens and Sons Limited, p. 100.

¹⁶ Hutchenson, Jr, J. C. (1929). The judgment intuitive: The function of the "Hunch" in judicial decision. *Cornell Law Quarterly*, 14, 278.

¹⁷ Hart, H.L.A. (2013). Discretion. *Harvard Law Review*, 127, p. 654.

without knowing everything about the future, leading to penumbral cases where the stated rule is ambiguous and liable to several valid interpretation.¹⁸

A significant feature of legal reasoning in resolving political conflict is what Sunstein describes as incompletely theorized agreements, where decision-makers agree on a specific result or a low-level principle without agreeing on the high-level theory that might justify it.¹⁹ This approach is well suited to a pluralistic society as it allows for the resolution of disputes without creating enduring disagreements over fundamental principles. Legal reasoning therefore enables legal professionals to argue about the application of norms and the interpretation of relevant legal texts, covering the whole spectrum of activities for the organisation of legal relationships.

In this paper, legal reasoning refers to both covert and overt justifications as the explanations why the court chooses a particular outcome as indicated in its judgement. This conceptualization restricts legal reasoning to the activities judges engage in as judicial arbiters when they render decisions in cases litigated before them. It also includes the process of appellate fact finding, but does not include the legal arguments expressed in the adversarial exchange of arguments between counsel before the court. Legal reasoning in this paper strictly and specifically refers to the arguments proffered as the reason(s) for reaching a particular decision contained in the published judgments of the relevant Nigerian courts in pre-election matters litigated before them.

1.2.3 Pre-election matters

Most commentators fail to define pre-election matters in their discussion of the electoral process, but hasten to claim that electoral manipulation starts at pre-election period in the electoral process where stakeholders in election administration fail to perform their monitoring and supervisory functions efficiently and effectively.²⁰ Pre-election matters are legal disputes arising from alleged infringements on electoral rights, occurring before the conduct of an election and may include the right to belong to an electoral constituency, form a political party, and contest or vote in an internal political party election for the selection of candidates for election, including challenges against the actions of the Independent National Electoral Commission (INEC) in this respect. Pre-election matters however have a statutory definition which identifies three categories of suits, all arising from the need to ensure that the matters are heard and determined timeously.²¹

Pre-election matters in this paper refer to suits instituted by aspirants against their political party, or against INEC, or any suit against INEC instituted by a political party in relation to activities in preparation for an election, including ancillary matters within political parties that affect the party's preparations for the conduct of its primary elections and submission of nominated aspirants to the electoral commission. This conceptualization does not include allegations of general administrative breaches in the internal workings of political parties. For the purpose of this paper, pre-election matters filed in an election petition tribunal and dismissed for want of jurisdiction, are not included either as reference or for discussion.

¹⁸ Ibid, p. 658.

¹⁹ Sunstein, C.R. (2018). *Legal Reasoning and Political Conflict*. Second Edition. Oxford University Press. p. 9.

²⁰ Alao, A.A. & Lanre, N.S. (2022). A Critical Assessment of Pre-election Administration on Nomination of Candidates in 2019 Elections in Nigeria. *Journal of Administrative Science*, 19(1), p. 27.

²¹ Section 285, Constitution of the Federal Republic of Nigeria (as altered), Cap. C123, LFN, 2004

1.3 Development of legal reasoning in pre-election matters

In the first three elections of the Fourth Republic, pre-election matters were litigated on the understanding of the subject matter held by the courts, and the authority conferred on them to adjudicate.²² Generally defined, the "subject-matter" of an action is the thing in dispute, the matter in controversy between the parties.²³ Jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong that is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists.²⁴

The case of *Amaechi v INEC*²⁵ is one of the pre-election matters in the current dispensation to drag until the election was concluded and one of the disputants sworn into office. In that case, the People's Democratic Party, PDP, substituted the name of Celestine Omehia for that of Rotimi Amaechi who had overwhelmingly won the party's gubernatorial primaries in Rivers State without giving "a cogent and verifiable reason" contrary to provisions of the Electoral Act 2006.²⁶ Rotimi Amaechi's legal challenge succeeded and he was sworn-in as Governor of Rivers state, several months after Omehia had been in office. In *Amaechi*, the judiciary appeared to have weaned itself of the deference for political party to manage their internal affairs. So, it was no surprise that subsequent elections witnessed the active intervention of the judiciary in the affairs of political parties justified by the evolving definition of pre-election matters aimed at engendering "more democratic, transparent and effective political parties" that respond to "specific challenges in the internal management and functioning of parties and party systems."²⁷

In *Akpamgbo-Okadigbo & Ors v. Chidi & Ors*,²⁸ the court determined that a pre-election matter is "a cause of action which predates and does not constitute any complaint against the actual conduct of an election" and that "issues of nomination and sponsorship of party's candidates for an election" precede the election and are therefore pre-election matters. In line with this reasoning, the Supreme Court in *APC v. Ibrahim Umar*²⁹ explained that the word "election" means the process of choosing by popular votes, a candidate for political office in a democratic government and that any preparation or process embarked upon by a political party in preparation for an election can be regarded as "PRE-election" or prior to the election or before the election. Accordingly, "the process or exercise embarked upon by a political party such as

²² Goldstein, A. (2025). The Lost World of Jurisdictional and Constitutional Facts in Administrative Law. *Administrative Law Review*, 78. <https://ssrn.com/abstract=5102533>, accessed 16th September 2025, p. 32

²³ Walsh, J.W. (1901). The True Meaning of the term "Jurisdiction". *Penn Carey Law*, https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=6021&context=penn_law_review, accessed 16th March 2025, p. 353

²⁴ Williams, R.C. (2022). Jurisdiction as Power. *The University of Chicago Law Review*, 89(7), pp. 1719-1792

²⁵ *Rt. Hon. Rotimi Chibuike Amaechi v Independent National Electoral Commission & Ors* (2008) 5 NWLR (Pt 1080) 227.

²⁶ Section 34(1), Electoral Act, 2006.

²⁷ Ojukwu, C. C. and Olaifa, T. (2011). Challenges of Internal Democracy in Nigeria's Political Parties: The Bane of Intra-party Conflicts in the Peoples Democratic Party of Nigeria. *Global Journal of Human Social Science*, 11(3), p. 28.

²⁸ *Akpamgbo-Okadigbo & Ors v. Chidi & Ors* (2015) LPELR - 24564 (SC) p. 13.

²⁹ *APC v. Ibrahim Umar* (2019) LPELR- 47296 (SC), p.15.

congress, nomination exercise"³⁰ are all pre-election matters or exercise. Later, an alteration to the legal framework for elections introduced time limits on the process of litigating pre-election matters,³¹ and the reasoning in *Ibrahim Umar* was modified in the case of *PDP vs. Ogwulegbo & Ors.*,³² wherein the Supreme Court said rather than the elastic interpretation given to Section 285 (14) in *APC v. Ibrahim Umar*, a narrower interpretation of the provision accords more with the letters of the Constitution since.³³

The reasoning in *Ibrahim Umar* had granted the right of action to parties who complained about issues directly within the purview of the political parties to resolve them according to their own constitutions, rules and regulations as voluntary organisations. The decision in *Ogwulegbo* limited pre-elections matters to strictly those statutorily defined as suits filed by aspirants alleging a political party's non-compliance with electoral laws or party guidelines during primaries, or suits by aspirants challenging the actions of the Independent National Electoral Commission (INEC) regarding their participation in an election, or suits by political parties challenging INEC's actions concerning candidate's disqualification, nomination processes, election timetables, or other preparatory activities. Even so, the subject matter of pre-election litigation remains to be disambiguated as the statutory definition did not include all justiciable incidence of pre-election matters.

In *High Chief Ikechi Emenike v APC & Ors.*,³⁴ for instance, the Abia State High Court held that it could assume jurisdiction, and did assume same, to determine the right of the plaintiff, High Chief Ikechi Emenike, to safeguard his victory at his political party's primary election as its gubernatorial candidate because of the likelihood that his name may not be submitted to INEC due to his running battles with the State chapter of the party. The Abia State High Court ruled in his favour and directed the APC to submit his name, and INEC to receive it, since he won the valid primary election conducted by the party. This decision of the Abia State High Court was affirmed by the Court of Appeal,³⁵ thus establishing a factual precedent that can be described as a pre-election subject matter, but one that is not within the definition of pre-election matters in the Constitution. There is no indication that this matter as framed and determined in the trial court and in the subsequent appeal has been further appealed to the Supreme Court.

In a similar case, in *Ogwuche v. Agbo & Ors.*,³⁶ the appellant, Aida Nath Ogwuche, was cleared by her political party to participate in the primary election while allegedly still a civil servant. The party's Screening Committee cleared her "as qualified to contest the primary election" but the respondent, Hon. Francis Otta Ogbo, "waited until after the appellant had contested and won the primary election ... before the respondent filed the suit" 36 days after the decision was made to clear her. According to the Court, the cause of action accrued on the day Ogwuche was cleared, not on the day she was declared winner of the primary election. The court therefore

³⁰ *ibid*

³¹ Section 285, Constitution of the Federal Republic of Nigeria, 1999 (Fourth Alteration No.21) Act 2017.

³² *PDP vs. Ogwulegbo & Ors.* (2022) LPELR-59168(SC), p. 20.

³³ Section 285(14) of the 1999 Constitution (as altered) explains "pre-election matter" specifically for the purpose of providing for "time for determination of pre-election matters and the establishment of Election Tribunals and time for determination of election petitions."

³⁴ Unreported suit No HUM/31/2022, per Benson Anya, judgment delivered on 24th June, 2022.

³⁵ Unreported Appeal No. CA/OW/269/2022, judgment delivered on the 2nd September 2022

³⁶ *Ogwuche v. Agbo & Ors* (2023) LPELR-60207(SC), pp. 20-22.

declared the suit "statute barred before it was filed." As a cause of action, it is difficult to understand how this falls within the ambit of the statutory definition of pre-election matters as all definitions therein assume the commission and completion of an act of breach, either of the Constitution, the Electoral Act, the constitution of a political party, or guidelines and other regulations in the conduct of political party primary elections.³⁷ The statute that bars pre-election matters cannot be said to apply to an act in preparation for the conduct of the act which now constitutes cause of action under the relevant section. It could be argued though that Section 285(14)(a) allows an aspirant to complain that a provision of the relevant laws "has not been complied with by a political party in respect of the selection or nomination of candidates for an election", and a problem will still exist. There has to be "the selection or nomination" in which he participated before an aspirant can acquire standing to sue.³⁸ The cause of action for which the Court in *Ogwuche* presumed to locate a pre-election subject matter can only be sustained as a peripheral matter, an intended act that could affect the conduct and outcome of a political party primary election, not as an act that has affected the conduct of the primary election. The concept of a perception of the "likelihood of a breach" as a legal principle in pre-election matters potentially represents doctrinal shift in how courts should intervene in disputes involving the conduct of political parties before their primary elections. In the concurring judgement of Okoro, JSC in *Ogwuche*, His Lordship expatiated on the concept of the likelihood of a breach as pre-election subject matter:

It is not in dispute that the cause of action for the purpose of challenging the Appellant's participation in the primary election of the 2nd Respondent accrued ... when the Appellant was screened and cleared to contest as an aspirant. The 1st Respondent, upon perceiving the likelihood of a breach of the provision of the Constitution ought to have filed the action challenging the purported none disengagement from public service by the Appellant within 14 days of the accrual of cause of action as prescribed by Section 285(9) of the Constitution.³⁹

His Lordship did not indicate at which forum such action should have been initiated, nor did he show how "perceiving the likelihood of a breach" qualifies as a pre-election matter. The conclusion that His Lordship believes this to be a pre-election matter is discerned from his expression of the limitation period attached to pre-election matters: "within 14 days of the accrual of the cause of action as prescribed by Section 285(9) of the Constitution."⁴⁰ The court determined that the cause of action in *Ogwuche* arose when the respondent in the case and other aspirants alleged that *Ogwuche* was still a civil servant,⁴¹ specifically when she was cleared as qualified to contest the primary election and not when she contested the primary election, which decision was made 36 days before the suit was filed. It is in this vein the court admonished that upon *perceiving the likelihood of a breach* of the provision of the Constitution, the plaintiff/respondent ought to have filed the action challenging the purported none disengagement

³⁷ Section 285, Constitution of the Federal Republic of Nigeria, 1999 (Fourth Alteration No.21) Act 2017.

³⁸ Section 29(5), Electoral Act, 2022.

³⁹ *Ogwuche v. Agbo & Ors* (2023) LPELR-60207(SC), pp. 23-24 per John Inyang Okoro, JSC

⁴⁰ Section 285(9) provides that "Notwithstanding anything to the contrary in this Constitution, every pre-election matter shall be filed not later than 14 days from the date of the occurrence of the event, decision or action complained of in the suit."

⁴¹ Section 66(1)(f) provides that "No person shall qualify for election to the Senate or the House of Representatives if he is a person employed in the public service of the Federation or of any state and has not resigned, withdrawn, or retired from such employment thirty days before the date of election."

of the Ogwuche from public service. By this reasoning, acts that constitute the likelihood of a breach of the provisions of relevant electoral laws for the conduct of political party primary election are pre-election matters too.

It is worth noting that political party primary election is crucial step in the electoral process that heralds the formal nomination of candidates for general elections and where the primaries are flawed, the sanctity of the general election will ultimately be called to question.⁴² Evidently therefore, issues of breaches of the processes of nomination, sponsorship and substitution of candidates for election are the dominant pre-election matters. In the case of *P.P.A. v. Saraki*,⁴³ a matter decided under the Electoral Act 2006, it was held that nomination and sponsorship are “virtually, if not absolutely, synonymous.” According to the Court:

A combined reading of sections 32 and 33 of the Electoral Act, 2006 would reveal that both ‘sponsorship’ and ‘nomination’ are virtually, if not absolutely, synonymous. The two words can be conveniently swapped, such that ‘nomination’ could be substituted for ‘sponsorship’ in section 32, and ‘sponsorship’ substituted for ‘nomination’ in section 33. Thus, there is no wisdom in embarking on a futile exercise of trying to make a difference between nomination by a political party and sponsorship by the same political party. It is a mere distinction without a difference. There can be no sponsorship without nomination. Thus, both are used interchangeably.⁴⁴

This reasoning created the impression that a candidate nominated at a political party primary election automatically becomes the candidate sponsored by the political party which was exactly what tended to exacerbate internal party squabbles and increase individual party members’ manipulative tendencies to secure nomination by whatever means possible and undermining the expectations of internal party democracy.

With all due respect to the court, whatever the form of reading given to the two sections, which are similar to Sections 29(1) and 30(1) of the Electoral Act 2022, nomination and sponsorship cannot mean the same thing as voters alone cannot sponsor candidates in Nigeria. Candidates for election, and their nominators need a political party to do so, just as all political parties need registered voters in the constituency they intend to sponsor candidates as there is no provision for independent candidacy in Nigeria. Political party primaries are therefore conducted for the nomination and sponsorship of candidates for general elections. Parties are however allowed to change or substitute their candidates that must have been legally nominated and sponsored.

1.3.1 Nomination of candidates

The nomination of candidates is the formal process by which a political party secures the consent of majority of its members in selecting its candidate for elective public office, subject to eligibility criteria and procedural requirements governed by electoral laws. Section 84(1) and (2) of the Electoral Act 2022, require any political party seeking to nominate candidates for election to hold direct or indirect primaries, or consensus “within the constituency it seeks to select its

⁴² Adekola, A.A. and Nurudeen, S.L. (2025). Presidential Nomination Process for Nigeria’s 2023 Election: A Study of PDP and APC. *Dauliya Journal of Islamic and International Affairs*, 10(2), p. 139.

⁴³ (2007) 17 NWLR (pt. 1064) 453 at 497, paras F – H (CA).

⁴⁴ *P.P.A. v. Saraki*, supra.

candidates for any of the elective offices where delegates shall vote for aspirants of their choice.”⁴⁵ Political parties outline the rules and procedure for the democratic election of delegates to vote at the conventions, congresses or meetings⁶ to ensure that the party’s National Working Committee, or whoever the committee assigns, conducts the process on a specified date, at a specific venue, and specific time so that all eligible party members are given the opportunity to participate in the process. Any primary election conducted outside the constituency for which a party seeks to sponsor a candidate is declared null and void. Section 84 (14) of the Electoral Act 2022 provides that:

Notwithstanding the provisions of this Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party have not been complied with in the selection or nomination of a candidate of a political party for election, may apply to the Federal High Court for redress.

In *Jonathan v. INEC & Ors*,⁴⁶ the Court of Appeal held that the change of venue to a place outside the constituency for a primary election was illegal and rendered the process null and void. The appellant, Jonathan Azibalamawal Jonathan, a candidate for the Ogbia State Constituency 1 seat in the Bayelsa State House of Assembly for the 2023 general elections, alleged that the PDP conducted the rescheduled primary election for selecting a candidate to represent his constituency at the Sports Complex in Ovom, Yenagoa, which was outside the Ogbia State Constituency, and the Court of Appeal adopted a strict textualist approach, construing the requirement for conducting the primary election “within the constituency” for which a candidate was being selected as mandatory and ruled that the PDP had lost the chance to sponsor a candidate for holding the selection outside the Ogbia State Constituency 1 seat in the Bayelsa State House of Assembly for the 2023 general elections.⁴⁷

Since the purpose of a primary election is to determine a winner, it is often the person with the highest number of votes and declared the winner at the end of a primary election that is deemed to be the candidate of his party whose name is then submitted to INEC. Section 84(5)(c)(ii) of the Electoral Act 2022 require that “the aspirant with the highest number of votes cast at the end of voting shall be declared the winner of the primaries of the political party and that aspirant’s name shall be forwarded to the Commission as the candidate of the party.” In *Nwite v. PDP & Ors*⁴⁸ the appellant, Emmanuel Nnabuike Nwite, along with the 3rd respondent, Johnson Obinna Nwachukwu, and other aspirants, contested their party’s re-scheduled primary election at which Nwite was declared winner with 46 out of 74 votes cast, but he was approached and attempts were made to prevail on him to withdraw from the race and when he refused, his party forwarded the name of another person, one Nwachukwu who scored zero (0) vote, to INEC as its candidate for the 2023 election into the House of Representatives. After his appeal to the PDP was ignored, Nwite initiated the action before the trial Court to reclaim his candidature where the trial court dismissed his case, and the Court of Appeal also dismissed his appeal hence this further appeal to

⁴⁵ Section 84(5)(a)(i)(ii), (b)(i), (c) Electoral Act, 2022.

⁴⁶ *Jonathan v. INEC & Ors* (2023) LPELR-60081(CA), pp. 35-45

⁴⁷ Section 84(13) Electoral Act, 2022, provides that: “Where a political party fails to comply with the provisions of this Act in the conduct of its primaries, its candidate for election shall not be included in the election for the particular position in issue.”

⁴⁸ (2022) LPELR-59192(SC).

the Supreme Court. The Supreme Court found that the trial court did not conduct a thorough evaluation of evidence and wrongly applied a set of precedential cases which were not related to the matter in *Nwite's* case, and that the Court of Appeal was led into similar error when it assumed the evaluation of evidence by the trial court was sufficient to reach a decision at appeal. The decisions of the lower courts were deemed perverse for ignoring the averments in the pleadings of both Nwite and Nwachukwu which clearly acknowledged that the re-scheduled primary election was validly conducted and a winner determined, and the Supreme Court wondered how a candidate who scored zero votes could be submitted as candidate instead of the candidate with the highest number of valid votes.

The Court in *Nwite* re-evaluated the evidence presented in accordance with its powers in the Supreme Court Act,⁴⁹ and argued the imperative in the relevant provision of the Act to enforce the appellant's right.⁵⁰ This imperative recognises that many sentences in statutes function as commands for someone to do something by imposing obligations as the auxiliary verb *shall* in most statute command someone to do something.⁵¹ The Black's Law Dictionary defines 'shall' as "has a duty to; is required to; should; may; will; is entitled to."⁵² In legal usage therefore, the word "shall is close in meaning to must"⁵³ with the context definitive as to the scope of its meaning.⁵⁴ In this instance, the word shall imposes an obligation on a political party to forward the names of only candidates who score the highest number of votes in a validly conducted primary election as candidates to INEC, as to construe otherwise will defeat the idea of making intra-party primary election free, fair and participatory and incite the tendency of party leaders to impose their preferred candidates on the party. The textualist approach enabled this policy argument to enforce the provisions of the relevant sections of the Electoral Act.

1.3.2 Sponsorship of candidates

Sponsorship is a qualifying requirement that completes the candidate's nomination process involving a further nomination by registered voters in a nominee's constituency, to make an aspirant the sponsored candidate of his political party. Section 65(2) (b) of the Constitution requires that candidates for election to the National Assembly should be members of a political party and be sponsored by that political party.⁵⁵ Section 106(d) requires the same of candidates for election to the House of Assembly.⁵⁶ Section 131(c) also requires that candidates for election to the office of Governor of a state be members of a political party and be sponsored by that

⁴⁹ Section 22, Supreme Court Act

⁵⁰ *Nwite v. PDP & Ors* (2022) LPELR-59192(SC), pp. 50-53.

⁵¹ Russell, B. (1994). Shall, Must, May. *Alberta Law Review*, 32(1), p. 94.

⁵² Garner, B.A. (Ed.). (2004). *Black's Law Dictionary*. Eight Edition. Thomson West, St. Paul, MN. p. 1407.

⁵³ Kimble, J. (1992). The Many Misuses of Shall. *The Scribes Journal of Legal Writing*. American Society of Legal Writers, Los Angeles, p. 64.

⁵⁴ Curto, J.C. (2018). The Use of the Modal Verb *Shall* in Legal Texts, *Ideas*, Universidad del Salvador. Escuela de Lenguas Modernas. Instituto de Investigación en Lenguas Modernas, Vol. 4, No. 4, p. 4.

⁵⁵ Constitution of the Federal Republic of Nigeria 1999, (as altered) states: "A person shall be qualified for election under subsection (1) of this section if (b) he is a member of a political party and is sponsored by that party."

⁵⁶ Section 106 of the 1999 Constitution (as altered) provides thus: "Subject to the provisions of section 107 of this Constitution, a person shall be qualified for election as a member of a House of Assembly if, (d) he is a member of a political party and is sponsored by that party."

political party,⁵⁷ as Section 177(c) makes a similar provision requiring candidates seeking election to the office of President of the Federation be sponsored by their political party.⁵⁸ These provisions are given practical application by the further requirement in Section 30 of the Electoral Act, 2022, which provides that “a candidate for election shall be nominated in writing by such number of persons whose names appear on the register of voters in the Constituency as the Commission may prescribe.”

The requirement for “such number of persons whose names appear on the register of voters in the constituency” distinguishes the sponsorship process from ordinary nomination by members of a political party. Therefore an aspirant becomes the sponsored nominee of his political party after his or her name is submitted “on a prescribed form”²² by his or her political party along with his or her sworn affidavit as to the correctness of the information he or she has supplied,²³ both of which are then published by INEC “in the constituency where the candidate intends to contest the election”²⁴ for possible impeachment.²⁵ Section 29(5) of the Electoral Act, 2022, allows only an aspirant who participated in the primaries of his political party to challenge the constitutional qualification of a candidate.⁵⁹ This means even if INEC had the power to disqualify a candidate, another political party or another party’s candidate cannot be the one to initiate proceedings against the alleged offender.

In the case of *SDP & Anor v. INEC & Ors*,⁶⁰ the Supreme Court held that the constitutional provision that allows a political party to challenge the actions, decisions or activities of the Independent National Electoral Commission where INEC disqualifies “its candidate from participating in an election” or where the “provisions of the Electoral Act or any other applicable law has not been complied with” by the Commission “in respect of the nomination of candidates of political parties ... in respect of preparation for an election”⁶¹ and the provision cannot be expanded by a political party to include the right to the legal capacity to initiate proceedings against another party’s candidate, making clear the textual meaning of the phrase “its candidate” in the relevant provision of the legal framework.⁶²

1.3.3 Substitution of candidates

Substitution is the act of changing or replacing one with another by putting something else that was not there before in place of something else that had been there in the first place. Obiaraeri and Obiaraeri observed that

⁵⁷ Section 131(c) Constitution of the Federal Republic of Nigeria 1999 (as altered): “A person shall be qualified for election to the office of the President if, (c) he is a member of a political party and is sponsored by that political party.”

⁵⁸ Section 177(c), *ibid*: “A person shall be qualified for election to the office of Governor of a State if (c) he is a member of a political party and is sponsored by that political party.”

⁵⁹ Section 29 (5) Electoral Act, 2022, provides as follows:

Any aspirant who participated in the primaries of his political party who has reasonable grounds to believe that any information given by his political party’s candidate in the affidavit or any document submitted by that candidate in relation to his constitutional requirements to contest the election is false, may file a suit at the Federal High Court against that candidate seeking a declaration that the information contained in the affidavit is false.

⁶⁰ *SDP & Anor v. INEC & Ors* (2023) LPELR-59836(SC).

⁶¹ *Ibid*, p. 36.

⁶² Section 285(14)(c).

In electoral parlance, the phrase ‘change of candidate’ is used interchangeably with ‘substitution of candidate’. The word ‘change’ is synonymous with or the same as ‘substitution’, ‘replacement’, ‘swap’, ‘exchange’, and or ‘switch’. In all of these, there must be something already in existence or in place before change or substitution can be effected ... There is no change or substitution in the void because you cannot put something on nothing and expect it to stand.⁶³

The idea of substitution is often to achieve a similar intended outcome while using a different but similar tool or approach. In the context of substituting a validly nominated and sponsored candidate in an election, substitution means removing the earlier submitted candidate for another candidate by the political party sponsoring the candidate in an election.

The Electoral Act prohibits a political party from changing or substituting a candidate who has emerged through a valid primary and whose name has been submitted to the Independent National Electoral Commission (INEC), except in cases of death or withdrawal. In the event of withdrawal, the candidate must submit a written notice to the political party, which is required to forward this notice to the Commission not later than 90 days before the election. In cases of death, if a candidate dies after the deadline for submitting nomination papers, but before the election begins, the Commission will countermand the election and set a new date within 14 days to allow for the nomination of a replacement candidate. If the candidate dies after the election has started but before the final results are announced, the Commission will suspend the election for 21 days to allow the political party, in legislative elections, to nominate a replacement. In executive elections, the running mate of the deceased candidate may continue and appoint a substitute deputy if elected. In *PDP v. INEC & Ors*,⁶⁴ the Peoples Democratic Party, PDP, sought to prevent INEC from recognizing Shettima as a validly substituted candidate for the office of Vice President candidate of APC arguing that Kashim Shettima had already been nominated by the same party to contest for a seat at the Senate, and his nomination as the running mate to Bola Ahmed Tinubu amounted to double nomination.

The Electoral Act makes a distinction between double nomination and multiple nominations as the former relates to the acts of nominators, while the latter relates to the act of the nominee. The Act makes it an offence for a nominator to nominate more than one person for election to the same office,⁶⁵ except where an earlier candidate had died, withdrawn or the nomination paper was held invalid by a Court of competent jurisdiction.⁶⁶ Also, a nominator shall not, so long as the candidate stands nominated, withdraw his or her nomination.⁶⁷ In the case of multiple nominations, this occurs “where a candidate knowingly allows himself to be nominated by more than one political party or in more than one constituency”,⁶⁸ in which case, his nomination shall be void.

⁶³ Obiaraeri, N.O. and Obiaraeri, C. (2022). A Withdrawal and Substitution of a Candidate under the Electoral Act, 2022: Welcome Paradigm Shifts and Legal Developments. *African Journal of Law and Human Rights*. Vol. 6 No. 2. p. 2.

⁶⁴ *PDP v. INEC & Ors* (2023) LPELR-60457(SC).

⁶⁵ Section 30(2) Electoral Act, 2022.

⁶⁶ Section 30(4), *ibid*.

⁶⁷ Section 30(5), *ibid*.

⁶⁸ Section 35, *ibid*.

In determining the allegation of double nomination against the APC and Shettima in *PDP v INEC*, the Supreme Court reasoned that none of the instances specified in the Act applied. According to the court, Shettima was earlier nominated by the APC to contest for a seat in the Senate and that election had not taken place, and that since Shettima already voluntarily withdrew his nomination for that position upon his nomination by Bola Tinubu, there was no double nomination. Accordingly, Shettima did not knowingly allow himself to be nominated by the same party for more than one constituency especially because the position of running mate was a constitutional requirement and not a contestable position.⁶⁹ The Supreme Court also distinguished another case on alleged double nomination, *Uche Nwosu v. APP*,⁷⁰ by pointing out that the appellant in *Uche* had knowingly allowed himself to be nominated as the gubernatorial candidate of two political parties when he submitted two sworn affidavits to INEC and since nomination is only complete when INEC receives the necessary documents from a political party, INEC's receipt of two Forms CF001, both sworn to by Uche Nwosu himself, leads to the conclusion that he "knowingly" allowed himself to be nominated by two political parties for the same position in an election, to render his nomination void. The textual meaning of the word 'knowingly' in context was determinative of the *Shettima* case,⁷¹ reinforced by analogical reasoning using the example of an earlier case to distinguish the facts in order to apply the relevant law by highlighting the peculiar connections between the acts and their consequences. The use of textualism in this case, and argument from precedent, reinforced stare decisis, the effect of which is confirmation of the monotonicity in electoral law jurisprudence in Nigeria.

Section 148 of the Electoral Act, 2022, grants the Commission the authority to issue regulations, guidelines, or manuals for the implementation of the Act. In the case of disputes over the application of these rules by the Commission, only an aspirant from a political party primary election or the party itself can challenge the Commission in court. Once a political party can show that the Commission has done something to "disqualifying its candidate from participating in an election" or failed to uphold "the provisions of the Electoral Act or any other applicable law" in relation to the particular party's nomination of candidates for an election" that political party acquires standing to initiate action under Section 84(14) of the Electoral Act, 2022, candidates acquire standing because the political party which sponsored them. In *INEC v NNPP*,⁷² the appellant, INEC, wanted to enforce its timetable of activities for the 2023 elections and deprive the NNPP of the opportunity to substitute some of its candidates who had voluntarily withdrawn their candidacy and the Supreme Court dismissed the appeal pointing out that INEC is bound by the same laws as NNPP and cannot presume to place its timetable of activities above the provisions of the Constitution and the Electoral Act 2022 on the subject of timeline for the substitution of candidates in an election.⁷³ The facts of this case are that the respondent, the New Nigeria Peoples Party (NNPP), conducted primary elections and submitted the names of its candidates to INEC, but some of the candidates voluntarily withdrew their candidature, and the NNPP conducted fresh primary elections to replace them. NNPP notified INEC of this development and requested to submit the substituted names, but INEC refused to accept the names of the substituted candidates claiming that the time for substitution had elapsed. The

⁶⁹ Section 142, Constitution of the Federal Republic of Nigeria, 1999 Cap. C123, LFN 2004.

⁷⁰ *Uche Nwosu v. APP* (2020) 16 NWLR (Pt. 1749) 28.

⁷¹ *PDP v. INEC & Ors* (2023) LPELR-60457(SC), Pp. 43-48.

⁷² *INEC v NNPP* (2023) LPELR-60154(SC).

⁷³ *Ibid*, Pp. 27-28.

Supreme Court held that the Timetable and Guidelines for elections issued by the INEC cannot take precedence over and above the extant provisions of the Electoral Act on the same issue. The court acknowledged that INEC Guidelines and Time Table of Activities have the force of law as a regulation pursuant to the Electoral Act,⁷⁴ and cannot take precedence over and above the extant provisions of the Act itself which allowed political parties “... to convey notification of withdrawal of sponsored candidates “not later than 90 days to the election”, and to “change or substitute its candidate whose name has been submitted under section 29 ... in the case of death or withdrawal”⁷⁵ if the party had “within 14 days” held “a fresh primary election to produce and submit a fresh candidate to the Commission for the election concerned.”⁷⁶ This argument from policy raised the warrant of delegated legislation to affirm that NNPP was within its right since the notice to substitute its candidates was sent to INEC when there was well over “90 days to the election” in question and so INEC cannot “jettison or refuse to accede to the request of substitution made to it” in accordance with the Act “in favour of its timetable and schedule”, an act which the court said was “contemptuously” done by INEC to undermine the law. This reasoning effectively defeated the state’s assumed prescription that INEC’s power to regulate the conduct of elections transcended all activities in relation to an election. A political party therefore has the legal right to perform its activities, including uploading to an open portal, the names of its sponsored candidates for an election *earlier* than the specified timeline issued by INEC. This is a policy argument drawing from the unambiguous wordings of the relevant text that underscores the supremacy of constitutional and statutory provisions over rules and regulations purported to be established by authority of delegation.

1.4 Findings

The following are our relevant findings:

1. A sub-group of issues that create the perception of the likelihood of a breach of the electoral legal framework in pre-election matters has increased the justification for the claim that pre-election matters are not limited to the statutory definition in the constitution or limited to the exclusive jurisdiction of the Federal High Court. The Supreme Court’s increasing use of arguments from precedent without expounding on the emerging ideas like the ‘likelihood of a breach’ of pre-election legal framework further clouds the jurisdictional parameters in pre-election matters under Nigerian law.
2. The texts of the prescriptive party and electoral laws, which the courts interpret, have continued to be ignored by political party leaders even though these laws are clear and bear their ordinary meanings, and party leaders and their members do not show any level of proficiency that should help their understanding that legal conclusions can only be altered by new facts to warrant judicial intervention.
3. Political parties’ internal dispute resolution mechanisms are not effectively and efficiently used by the political parties in resolving pre-election disputes as the courts are constantly involved in drawing attention to these mechanisms and effectively causing courts to strike out matters for lack of jurisdiction.

1.5 Recommendations

⁷⁴ Section 148 Electoral Act, 2022.

⁷⁵ Section 3, *ibid*.

⁷⁶ Section 33, *ibid*.

To further improve the role and impact of legal reasoning in the development of pre-election matters therefore, the following recommendations are made:

1. The courts, especially the Supreme Court, should reduce the use of arguments from precedent and instead expound emerging ideas in pre-election matters like the ‘likelihood of a breach’ principle to situate pre-election matters within the concurrent jurisdiction of the High Courts.
2. The texts of the prescriptive party and electoral laws should be made a subject of study and understanding among political party leaders as the laws are clear and bear their ordinary meanings with party leaders and members required to show some level of proficiency that will help their understanding that legal conclusions can only be altered by new facts, which should lead to fewer pre-election matters filed in court.
3. The internal dispute resolution mechanisms of political parties should be reinforced by making it mandatory for pre-election disputes arising from political party primary elections to be submitted to mediation without prejudice to the right of parties to proceed to litigation. Section 67(1)(c) of the Arbitration and Mediation Act 2023 has included “domestic civil mediation” that goes beyond commercial purposes only, while Section 82(2) of the Act makes settlement agreement resulting from the mediation “binding on the parties and enforceable in Court as a contract, consent judgement or consent award”, thus providing necessary safeguards that make this approach both politically and judicially effective for resolving pre-election matters which will also reduce the time spent in courts, empower political parties to self-regulate, and foster intra-party democracy. This will require amendment to sections 29(5) and 84(14) of the Electoral Act 2022 by the addition of the phrase “*may cause the aspirant/candidate to submit to mandatory mediation without prejudice to his filing/applying...*” in each of the sections.

Section 29(5) will then read as follows:

Any aspirant who participated in the primaries of his political party who has reasonable grounds to believe that any information given by his political party’s candidate in the affidavit or any document submitted by that candidate in relation to his constitutional requirements to contest the election is false, *may cause the aspirant/candidate to submit to mandatory mediation without prejudice to his filing a suit at the Federal High Court against that candidate seeking a declaration that the information contained in the affidavit is false.*

While Section 84(14) will then read as follows:

Notwithstanding the provisions of this Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party have not been complied with in the selection or nomination of a candidate of a political party for election, *may cause the aspirant/candidate to submit to mandatory mediation without prejudice to his applying to the Federal High Court for redress.*

1.6 Conclusion

This paper has attempted to trace the judicial thought process in understanding pre-election issues that are justiciable within the broader framework of constitutional democracy as expressed

in judgements of courts in the fourth republic. This attempt identified various definitions of pre-election matters and how the courts have treated those issues when brought before them for adjudication. A further thematic analysis of legal reasoning in selected judgments of pre-election cases arising from the conduct of political party primary elections has noted the prevalence of strict textualism as predominant legal reasoning in the cases reviewed. This prevalence is attributable to the desire in the polity for some level of intra-party democracy consistent with the prescribed rules and regulations in the electoral legal framework. Also, the formal textualist legal reasoning expounded through deductive reasoning employed in the reviewed cases provided clarity and consistency in legal interpretation of relevant legal texts, reduced confusion and created a predictable legal environment which also strengthened the electoral process by ensuring that the Constitution, Electoral Act, and party rules are strictly adhered to, safeguarding the integrity of the pre-election processes and minimising the risk of manipulation. This interpretation and application process does not allow for any judicial discretion and the predictable legal outcomes resulting from textualism show how political accountability and stability can be ensured within the electoral process in Nigeria. However, progressive changes in judicial attitude regarding pre-election issues showed how certain imminent breaches of the electoral legal framework exist and their likely effect on the conduct of free and fair political party primary elections and how this has created a sub-group of pre-election matters external to the statutory classification of pre-election matters which presents a subject matter for further research.